

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0559**

Jack Richard Moore, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

**Filed February 5, 2024
Reversed and remanded
Frisch, Judge**

Grant County District Court
File No. 26-CV-21-301

Christopher J. Perske, Grannis & Hauge, P.A., Eagan, Minnesota (for appellant)

Keith Ellison, Attorney General, Linnea VanPilsum-Bloom, Assistant Attorney General,
St. Paul, Minnesota (for respondent)

Considered and decided by Frisch, Presiding Judge; Johnson, Judge; and Larkin,
Judge.

NONPRECEDENTIAL OPINION

FRISCH, Judge

Appellant seeks reversal of the district court's order sustaining the revocation of his driver's license, arguing that (1) appellant was not in physical control of the vehicle as a matter of law and (2) law enforcement lacked probable cause to believe appellant was in

physical control of the vehicle. Because the district court did not resolve whether appellant was in physical control of the vehicle, we reverse and remand.

FACTS

On October 10, 2021, appellant Jack Richard Moore and two friends went to a bar. The bartender did not allow Moore to leave with his keys due to his intoxicated state. Instead, Moore left with friends, one of whom drove the vehicle.

A law-enforcement officer later responded to a report of a vehicle stopped on the side of the road. The officer drove past the vehicle, which was parked but running. The officer did not see anyone inside the vehicle. The officer observed two people standing on an overpass approximately a quarter mile away from the vehicle.

The officer approached the people on the overpass. The people on the overpass told the officer that they had been in the parked vehicle but were now waiting for another ride. The officer learned that a third person, Moore, was still inside the vehicle. The officer returned to the vehicle and saw Moore sleeping across the center console, with the bottom half of his body in the front-passenger seat and the top half of his body in the back seat.

The officer made multiple attempts to wake Moore. First, the officer knocked on the window and received no response. Next, the officer opened the driver's side door and called his name to no response. Finally, the officer opened the back door near Moore's head and again called his name, at which time Moore responded.

Moore exited the vehicle, and the officer conducted an investigation for driving while intoxicated (DWI). Based on that investigation, the officer arrested Moore for suspicion of DWI. The state thereafter revoked Moore's driver's license.

Moore contested the revocation, arguing that he was not in physical control of the vehicle. At the implied-consent hearing, the district court heard testimony from the arresting officer and Moore.¹

The officer testified that Moore stated that he parked the vehicle. The officer also testified that Moore stated that his friend had been driving. Moore testified he did not drive or park the vehicle and that he did not recall telling the officer that he parked the vehicle.

The district court sustained the revocation, concluding that the officer had probable cause to believe Moore was in physical control of the vehicle.

Moore appeals.

DECISION

Moore challenges the district court's order sustaining the revocation of his driver's license, arguing that (1) he was not in physical control of the vehicle as a matter of law and (2) the officer lacked probable cause to arrest him on suspicion of DWI.

For the district court to sustain a license revocation, the commissioner "must show not only that the arresting police officer had probable cause to believe the driver was in physical control of [the] vehicle, but also that the driver was in such physical control." *Roberts v. Comm'r of Pub. Safety*, 371 N.W.2d 605, 607 (Minn. App. 1985), *rev. denied* (Minn. Oct. 11, 1985). The two issues may be raised as separate challenges to a revocation decision. *Snyder v. Comm'r of Pub. Safety*, 496 N.W.2d 858, 860 (Minn. App. 1993) (*Snyder 1993*). Once the facts are established, we review *de novo* whether an individual

¹ The state subpoenaed Moore's two friends, neither of whom appeared at the hearing.

was in physical control of the vehicle. *Snyder v. Comm'r of Pub. Safety*, 744 N.W.2d 19, 22 (Minn. App. 2008).

To sustain a license revocation, the commissioner must “show by a fair preponderance of the evidence that the person was in physical control of the vehicle.” *Roberts*, 371 N.W.2d at 607. We give the term “physical control . . . the broadest possible effect” to “enable the drunken driver to be apprehended before he strikes” and to “deter individuals who have been drinking from getting into their vehicles, except as passengers.” *Shane v. Comm'r of Pub. Safety*, 587 N.W.2d 639, 641 (Minn. 1998) (quotations omitted). Thus, “physical control” encompasses more than “drive” or “operate.” *State v. Starfield*, 481 N.W.2d 834, 836 (Minn. 1992). Physical control covers situations “where an inebriated person is found in a parked vehicle under circumstances where the car, without too much difficulty, might again be started and become a source of danger to the operator, to others, or to property.” *Id.* at 837. But, for an officer to have probable cause “to believe a *known passenger* is in physical control of a motor vehicle, the officer must have reason to believe that the passenger has or is about to take some action that makes the motor vehicle a source of danger to themselves, to others, or to property.” *Shane*, 587 N.W.2d at 641 (emphasis added).

Moore expressly argued to the district court that he was not in physical control of the vehicle. The district court did not resolve whether Moore was in physical control of the vehicle, concluding only that the officer had probable cause to believe that Moore was in physical control of the vehicle. *Roberts*, 371 N.W.2d at 607. And the district court did not make any findings as to whether Moore drove, operated, or parked the vehicle. *See*

Starfield, 481 N.W.2d at 836-38 (“[W]hen it appears that the defendant drove the car to where it came to rest, this is also evidence that the defendant, when found in the parked car, was in physical control of the car while it was parked.”). The district court did not make a finding that Moore was a known passenger of the vehicle. *Shane*, 587 N.W.2d at 641.

We cannot resolve the issue presented on appeal of whether Moore was in physical control of the vehicle in the absence of findings and conclusions by the district court as to whether Moore was in physical control of the vehicle. On remand, the district court should resolve whether Moore drove, parked, or operated the vehicle based on credited evidence. In so doing, the district court may in its discretion reopen the record to resolve whether Moore was in physical control of the vehicle.

The district court’s separate determination that the officer had probable cause to believe Moore was in physical control of the vehicle is not sufficient to sustain the revocation. *Roberts*, 371 N.W.2d at 607; *see also Snyder 1993*, 496 N.W.2d at 860 (reiterating that to sustain a revocation the commissioner must prove both probable cause and physical control of the vehicle). The question raised at the district court was not resolved by the legal conclusion reached by the district court. Therefore, we reverse and remand.

Reversed and remanded.